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C.M.A.Nos.310 and 521of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.02.2024

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THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN THILAKAVADI,J.

C.M.A.Nos.310 and 521of 2020
and
C.M.P.Nos.3249 and 2112 of 2020

C.M.A.No.310 of 2020

The National Insurance Company Limited,
Represented by its Divisional Manager,
Bharadhidasan Salai,
Cantonment,
Thiruchirapalli -1

...Appellant

Vs.

1. Anjalidevi

2. Varadharasu

3. Thangamani

4. The Regional Manager,

ICICI Lombard General Insurance Company Limited,

No.140, Chotta boy Centre,

Nungambakkam High Road,

Nungambakkam, Chennai - 22

...Respondents



C.M.A.Nos.310 and 521of 2020

C.M.A.No.521 of 2020

The Branch Manager,
National Insurance Company Limited,
Sundaram Arcade, No.13-A, Williams Road,
Cantonment,
Thiruchirappalli - 1

...Appellant

Vs.

1. Sakthivel

2. Varadharasu

3. Thangamani

4. The Regional Manager,

ICICI Lombard General Insurance Company Limited,

No.140, Chotta boy Centre,

Nungambakkam High Road,

Nungambakkam, Chennai - 22

...Respondents

Prayer in C.M.A.No.310 of 2020: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, to set aside the decree and judgment passed in MACT.O.P.No.632 of 2014 dated 29.06.2018, on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Perambalur.



C.M.A.Nos.310 and 521of 2020

WEB COPY

Prayer in C.M.A.No.521 of 2020: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act,1988, to set aside the decree and judgment passed in MACT.O.P.No.51 of 2015, dated 29.06.2018 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Perambalur.

For Appellant : Mrs.N.B.Surekha
in both CMAs
For R1 to R3 : No Appearance
in both CMAs
For R4 : Mr.K.Poomalai
in both CMAs

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant/Insurance Company, challenging the award dated 29.06.2018 made in M.C.O.P.No.632 of 2014 and M.C.O.P.No.51 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate Court, Perambalur.



C.M.A.Nos.310 and 521of 2020

WEB COPY

2. The appellant is the second respondent in M.C.O.P. Nos.632 of 2014 and 51 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Perambalur. The 1st respondent in both the appeals have filed the above said claim petitions claiming a sum of Rs.8,00,000/- and Rs.40,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 17.08.2014.

3. According to the 1st respondent in both the appeals, on the date of accident i.e., on 17.08.2014 at about 6.00 p.m, they were traveling in a TATA ACE bearing Registration No.TN 46 Q 0372 as owner of the goods. While they were proceeding from east to west at Thittakudi Border, Lebbaikudikadu main road, when the said vehicle was nearing Keelakudikadu water tank, the driver of the said vehicle drove the same in a rash and negligent manner and dashed against the Auto bearing registration No.TN 31 BV 9713, which was coming in the opposite direction and caused the accident. In the said accident, the 1st respondent in both the appeals sustained grievous injuries. Hence, they filed the above claim petitions before the Tribunal claiming



C.M.A.Nos.310 and 521of 2020

compensation for the injuries, against the respondents 2 to 4 and appellant.

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4. The 2nd respondent herein who is the owner of the TATA Ace and the 3rd respondent herein who is the owner of the auto remained exparte before the Tribunal.

5. The appellant/National Insurance Company filed separate counter statements in both the claim petitions, denying the averments made in the claim petitions and contended that the accident occurred only due to rash and negligent driving by the driver of the auto belonging to the 3rd respondent. In any event, there is gross violation of the Insurance policy as the 1st respondent in both the appeals have travelled as gratuitous passengers at the time of the accident and the owner of the TATA Ace has violated the policy conditions and hence the appellant/ National Insurance Company is not liable to pay any compensation to the 1st respondent in both the appeals.

6. The learned counsel for the 4th respondent/ICICI Lombard General Insurance Company Limited denied the averments made in the claim



C.M.A.Nos.310 and 521of 2020

petitions and contended that the case has been registered only against the driver of the TATA Ace belonging to the 2nd respondent. Hence, the fault is on the part of the driver of the TATA ACE, who failed to obey the traffic rules and thereby, invited the accident. Hence the 4th respondent/ICICI Lombard General Insurance Company is not liable to pay any compensation to the 1st respondent in both the appeals.

7. Before the Tribunal, the 1st respondent in both the appeals examined themselves as P.W.1 and P.W.2 respectively and marked 11 documents as Exs.P1 to P11. On the side of the appellant/Insurance Company, one Saratha, Assistant in RTO office, Perambalur, was examined as RW.1; one Annadurai/SI of police, Mangalamedu was examined as RW.2 and one Ashok Kumar, Administrative Officer of appellant was examined as RW.3 and four documents were marked as Exs.R1, R2, R3 and R4. The disability certificate of P.W.1 issued by Medical Board was marked as Ex.C1. The fourth respondent did not let in any oral or documentary evidence.



C.M.A.Nos.310 and 521of 2020

WEB COPY

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the Tata Ace belonging to the 2nd respondent and directed the appellant/Insurance Company being insurer of the said Tata Ace to pay a sum of Rs.1,18,500/- and Rs.8,500/- as compensation to the 1st respondent in both the appeals respectively at the first instance and recover the same from the owner of the TATA Ace/2nd respondent herein. The Tribunal dismissed the claim petitions against the respondents 3 & 4.

9. Against the said award dated 29.06.2018 made in M.C.O.P. Nos.632 of 2014 and 51 of 2015, the appellant/Insurance Company has come out with the present appeals.

10. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal failed to see that the accident had occurred involving two vehicles and the Tribunal erred in fixing the negligence only on the part of the driver of the TATA Ace belonging to the 2nd respondent. The evidence on record shows that driver of the Auto



C.M.A.Nos.310 and 521of 2020

WEB COPY

belonging to the 3rd respondent has also driven the auto at high speed. The Tribunal ought to have fixed liability on the part of the driver of the auto also. The 1st respondent in both the appeals have travelled in the TATA Ace as gratuitous passengers. The Tribunal having held that 1st respondent in both the appeals have travelled as gratuitous passengers, erroneously ordered pay and recovery. The Tribunal having found the 1st respondent in both the appeals traveled as unauthorized passengers, ought to have exonerated the appellant/Insurance Company and relied on the judgement reported in 2018 (2) TNMAC 731 DB [Bharati AXA General Insurance Co. Ltd., v. Aandi and others] and prayed for allowing the appeals. The relevant paragraphs of the said judgment are extracted as follows:

"49.We find that the judgments relied upon by the Hon'ble Supreme Court in Shivaraj Vs. Rajendra and another referred to supra in support of its conclusion that the Insurance Company can be directed to pay the compensation with liberty to recover the same even in respect of a gratuitous passenger or an unauthorized passenger in a goods vehicle, do not support the said conclusion.



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50. In fact, we find that in none of the judgments referred to viz., *National Insurance Co.Ltd. v. Swaran Singh and others*, 2004 (1) TN MAC 104 (SC) : 2004 (3) SCC 297; *Mangla Ram V. Oriental Insurance Co. Ltd.* 2018 (1) TN MAC 681 (SC) : 2018 (5) SCC 656 ; *Rani & ors. v. National Insurance Co.Ltd. & ors.*, 2018 (2) TN MAC 278 (SC) : 2018 (9) Scale 310; and *Manuara Khatun and others v. Rajesh Kumar Singh and others*, 2017 (1) TN MAC 289 (SC) : 2017 (4) SCC 796, the question regarding the liability of the Insurance Company to pay the compensation in respect of an unauthorized Passenger in the Goods Vehicle did arise for consideration. We are therefore of the considered opinion that the Judgment of the Two-Judge Bench in *Shivaraj v. Rajendra* and another referred to supra cannot be taken as a precedent to conclude that the Insurance Company would be liable to pay the Compensation even in respect of an unauthorized Passenger, in a Goods Vehicle, in the light of categorical *India Assurance Company v. Asha Rani and others*; and *National Insurance Co. Ltd. v. Baljit Kaur and others*, referred to supra. We therefore conclude that the Tribunal, in the case on hand, was not right in directing the Insurance Company to pay the Compensation and giving it the liberty to recover the same from the Owner.



C.M.A.Nos.310 and 521of 2020

WEB COPY

51. No doubt true that in many cases the claimants may not be able to realise the award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the statute and the decisions of the larger benches of the Hon'ble Supreme Court of India.”

11. The 2nd respondent herein in both the appeals remained ex-parte before the Tribunal and hence, notice to the 2nd respondent in both the appeals is dispensed with. The claim petitions filed against the respondents 3 and 4 were dismissed and since no adverse order is passed, notice to the 3rd respondent is also dispensed with.

12. Heard the learned counsel appearing for the appellant/National Insurance Company and learned counsel appearing for the 4th respondent and perused the materials available on record.

13. Admittedly, the 1st respondent in both the appeals, they have travelled in TATA Ace bearing Registration No.TN 46 Q 0372 as owner of



C.M.A.Nos.310 and 521of 2020

WEB COPY

the goods along with the goods and the driver of the TATA Ace has driven the vehicle in a rash and negligent manner, dashed against the auto and caused the accident. The 1st respondent in both the appeals examined themselves as P.W.1 and P.W.2 to prove their contention. On the other hand, it is the specific case of the appellant/Insurance Company that the 1st respondent in both the appeals did not travel as owner of the goods and they are only gratuitous passengers. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the TATA Ace belonging to the 2nd respondent. There is no error in the said reasoning of the Tribunal warranting interference by this Court.

14. The Tribunal after appreciating the materials on record in proper perspective, held that the 1st respondent in both the appeals travelled as gratuitous passengers in the vehicle. Though the 1st respondent in both the appeals contend that they travelled only as owner of the goods in the vehicle not as gratuitous passengers, there is nothing on record to show that the 1st respondent in the appeals travelled along with the goods as owners in the



C.M.A.Nos.310 and 521of 2020

goods vehicle. The Tribunal having held that the 1st respondent in both the appeals travelled as gratuitous passengers, erroneously ordered pay and recovery. The learned counsel appearing for the appellant relied on the decision of the Division Bench of this Court reported in 2018 (2) TNMAC 731 DB (Bharati AXA General Insurance Co. Ltd., v. Aandi and others), wherein it has been held that the Insurance Company is not liable to pay compensation for gratuitous passengers, who travelled in goods vehicle. The ratio in the said judgement is squarely applicable to the facts of the present case.

15. For the above reason, award of the Tribunal, ordering pay and recovery directing the appellant/Insurance Company to pay the compensation at the first instance and recover the same from the 2nd respondent herein is set aside. In view of the finding of the Tribunal that the 1st respondent in both the appeals travelled in the vehicle as gratuitous passengers, the 2nd respondent, owner of the vehicle, is directed to pay compensation to the 1st respondent in both the appeals as awarded by the Tribunal in the respective claim petitions.



C.M.A.Nos.310 and 521of 2020

WEB COPY

16. In the result, these Civil Miscellaneous Appeals are partly allowed. The portion of the award directing the appellant / Insurance Company to pay the compensation to the 1st respondent in both the appeals and recover the same from the 2nd respondent is set aside and the compensation awarded by the Tribunal to the 1st respondent in both the appeals, along with interest and costs is confirmed. The second respondent, owner of the TATA Ace, is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent in both the appeals are permitted to withdraw the respective award amount along with interest and costs, less the amount if any, already withdrawn by them, by filing necessary applications before the Tribunal. The appellant/Insurance Company is permitted to withdraw the amount lying in the deposit to the credit of M.C.O.P. Nos.632 of 2014 and 51 of 2015 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Perambalur, if the entire award amount has already been deposited by them. It is also made clear that if the 1st respondent in both the appeals have already withdrawn the award amount, the appellant/Insurance Company is not entitled



C.M.A.Nos.310 and 521of 2020

WEB COPY

to recover the same from the 1st respondent and the appellant is entitled to recover only from second respondent. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.02.2024

Internet:Yes/No
Index:Yes/No
Speaking/Non-speaking order
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To

- 1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate Court, Perambalur.
2. The Section Officer,
VR Section,
High Court, Madras.



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C.M.A.Nos.310 and 521of 2020

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06.02.2024